No. 83-489

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

LEON G. KAZANZAS, JR.,
Petitioner,

v.

WALT DISNEY WORLD CO.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITIONER'S REPLY BRIEF

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TABLE OF AUTHORITIES

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The Respondent, in its Brief in Opposition in the instant case, attempts to rewrite the decision of the lower court rendered in this proceeding. The district court held that both the 180-day period and the two-year statute of limitations were tolled until the Petitioner contacted a lawyer in June, 1979. *Kazanzas v. Disney World,* 518 F.Supp. 292, 294 (M.D. Fl. 1981). The trial court found that, due to Respondent's failure to post the proper notices as required by 29 U.S.C. §627, the Petitioner lacked actual knowledge of his ADEA rights, and he lacked actual knowledge of the proper procedures for enforcing said rights. The trial court further held that the Respondent would suffer no prejudice by tolling the filing periods until June 1979. *Id.* In essense, Respondent asks this Court to excuse its willful

violation of the notice requirements of the ADEA. Respondent would place upon its employees the burden of procuring knowledge of their ADEA rights, despite the fact that the statute places upon Respondent the duty to inform its employees of the ADEA and of its enforcement mechanisms. As indicated in the testimony before the trial court, Respondent has a full-time employee whose sole task is to insure Respondent's compliance with applicable employment laws and regulations. (T. Vol. III; 200). Why then were the required notices not posted? Whatever the reason, one thing is certain – this Court should not excuse Respondent's violation of the law.

One of the primary reasons for having employers post a proper notice is so that employees will be able to receive assistance from a government agency that is knowledgeable and experienced in matters of employment discrimination. The appropriate government agency, such as E.E.O.C., can help the employee attempt to resolve his or her employment problem amicably, and if this cannot be done, the government agency can inform the employee of his or her rights, including any applicable periods of limitations for filing suit.

Respondent states in its brief that the Eleventh Circuit ruled that the statute of limitations runs from the date when the cause of action accrues. Respondent's Brief in Opposition at page 1. The Court of Appeals actually found that the 180-day period and the two-year statute of limitations begin at the same time. 704 F.2d at 1529. The Court relied upon *Marshall v. Kimberly-Clark Corp.*, 625 F.2d 1300 (5th Cir. 1980) in reaching this conclusion. *Marshall* clearly stands for this proposition. See 625 F.2d at 1301. The district court's decision follows the *Marshall* mandate while the Court of Appeals' ruling is in conflict

with *Marshall.* Applying the Court of Appeals' reasoning, the two-year time limit had not yet run when Petitioner filed suit.

In its brief, Respondent states that the Court of Appeals examined the evidence presented at trial and concluded that equitable tolling of the two-year limitation was not warranted. At the same time Respondent argues that this does not constitute a reexamination of the evidence, because the Court was considering the issue of the two-year statute of limitation, an issue Respondent claims was ignored by the district court. See Respondent's Brief in Opposition at page 4. Nothing could be further from the truth. The district court specifically considered the issue of the two-year limitation period and concluded the facts as established at trial warranted a tolling of the statute of limitations for at least a period of five months and three days. 518 F.Supp. at 294-95. It must be emphasized that all that is required to make the Petitioner's action timely is a delay in the start of the two-year limitation for a period of five months and three days – not the two years plus period assumed by the Court of Appeals. In its decision the Court of Appeals reconsidered and reevaluated the trial court's findings and concluded that such a tolling was not warranted. This was error and contrary to the rules established by this Court in *Guzman v. Pichirilo,* 369 U.S. 698 (1962) and *Roemer v. Maryland Public Works Board,* 426 U.S. 736 (1976).

The decision of this Court in *Unexcelled Chemical Corp. v. United States,* 345 U.S. 59 (1953) is irrelevant to the determination of the instant case. That decision concerned the issue of when a cause of action accrued for purposes of determining when the statute of limitations contained in 29 USC Statutes 255 began to run. This Court

concluded that a cause of action accrued and the limitation period started on the date the wrongful act occurred. *Id.* at 65. This Court further held that this limitation period was not tolled during the pendency of administrative proceedings. *Id.* at 65-66. The issue presently before this Court is a wholly different one. Petitioner has made no claim that his cause of action accrued on any date other than February 26, 1977, his date of discharge by the Respondent. Likewise, the Petitioner has never asserted that the two-year limitation was tolled during the pendency of any administrative remedies. In fact, an examination of the record below will reveal the administrative agency took little or no action. Rather the issue before this Court is whether the two-year statute of limitations was tolled by Respondent's failure to post the required notices. Petitioner would submit that the two-year statute of limitations was tolled by Respondent's failure to post the required notices.

The Respondent also attempts to rely upon this Court's decision in *Delaware State College v. Ricks,* 449 U.S. 250 (1980). This case has no bearing on the issues of the instant case. The facts in *Ricks* are completely different from those in the instant case. The facts recited in *Ricks* show that the Plaintiff knew of his rights under Title VII not to be discriminated against in employment decisions and of the procedures for pursuing them. *Id.* at 252-56. Despite this knowledge Ricks sat on his rights for almost two years. The fact that Ricks' cause of action was found to be time barred was his own fault. In the instant case the District Court found that the Respondent's action of failing to post the required notices caused the Petitioner to be delayed in filing his Complaint. It must be remembered that it is the Respondent who violated the ADEA by firing the Petitioner because of his age and by not providing suf-

ficient notification. In short, the Respondent seeks to be excused from its own wrongdoings. The remedial purposes of ADEA would not be advanced by such a result. Respondent's reliance upon the *Ricks* decision, ignores the fact that a different issue was involved there. As in *Unexcelled Chemical,* this Court was confronted with the issue of when a cause of action accrued under Title VII for limitation purposes and whether the applicable limitation period was tolled by the pursuit of administrative relief. This Court answered the question the same as in *Unexcelled Chemical.* As pointed out above, these are not the issues presented by the instant case.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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